

BEFORE THE DEPARTMENT OF AGRICULTURE
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed adoption of)	NOTICE OF PUBLIC HEARING ON
New Rule I through VII relating to)	PROPOSED ADOPTION
Montana certified natural beef cattle)	
marketing program)	

TO: All Concerned Persons

1. On February 7, 2008, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on January 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The proposed new rules would be placed in ARM Title 4 and provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Animal by-products" means biodegradable wastes consisting of animal carcasses, parts of animal carcasses, and products of animal origin that are not intended for human consumption.

(2) "Beef product" means edible muscle tissue produced from the harvesting and processing of finished cattle.

(3) "Best grazing standards" means proper grazing using the practice of managing forage harvest by all grazing animals including domestic livestock at a sustainable yield that does not accelerate erosion and sedimentation above acceptable levels for the receiving waters.

(4) "Certificate" means a document signed by the department verifying the producer is raising cattle within the parameters of the "Montana Certified Natural Beef" program.

(5) "Certificate holder" means a producer who has met all requirements for participation in the program and has received a certificate signed by the department.

(6) "Certified enrolled cattle" means feeder and finished cattle that have been enrolled and raised in compliance with the requirements of the program.

(7) "Corrective action" means the action required of a certificate holder by the department to come into compliance with the requirements of the program.

(8) "Department" means the Department of Agriculture.

(9) "Ionophores" means the technical name for a class of additives designed to effect the microbial population found in the rumen that are commonly fed to cattle to improve feed efficiency and rate of gain.

(10) "Montana Beef Network" means a program providing animal identification for Montana cattle that meet specific beef quality and consistency targets.

(11) "Producer" means a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices, and arrangements who raise, own, feed, or finish cattle.

(12) "Program" means the Montana Certified Natural Beef Program created by Title 80, chapter 11, part 8, MCA and this chapter.

(13) "Raised" means the animal must have spent its entire life in Montana except for up to five days allowing for slaughter.

(14) "Sub-therapeutic antibiotics" means antibiotics used as preventatives such as those administered below the dosage levels used to treat diseases.

(15) "Synthetic hormones" or "synthetic growth promotants" means hormones or growth promotants that are developed in the laboratory to be used in enhancing growth in cattle.

AUTH: 80-11-801, MCA

IMP: 80-11-801, MCA

NEW RULE II APPLICATION AND PROGRAM AGREEMENT (1) Any producer desiring to participate in the program shall submit an application on a form provided by the department, which shall include the appropriate application fee and a Montana Natural Beef Program agreement, which must be signed by the applicant. The applicant shall also participate in an in-person evaluation as a part of the certification process.

(2) The department shall establish the terms and conditions included in the agreement consistent with Title 80, chapter 11, part 8, MCA, and this chapter. An agreement shall include, but is not limited to, the following requirements:

(a) the certificate holder shall not use any proprietary rights of the program except as allowed by law or pursuant to the terms of the agreement and this chapter;

(b) the certificate holder shall follow all applicable program procedures and keep detailed records showing full compliance with requirements of the program;

(c) the certificate holder shall pay all fees and costs;

(d) the certificate holder shall submit to all inspections and audits, and to allow or provide for access by the department, Department of Livestock or its designees, to the facility, enrolled cattle, and records during regular business hours for such purposes;

(e) the certificate holder shall represent that the applicable requirements set forth in this chapter for the animal at each applicable stage of production will be met;

(f) the certificate holder shall comply with all applicable state, federal, and local laws, rules, and ordinances;

(g) the certificate holder agrees that the certificate may be suspended or revoked by the department as provided in this chapter.

(3) If an application is approved, the department shall issue a certificate verifying the holder has met the Montana Natural Beef Program requirements.

(4) The department may deny an application if it determines that issuing the certificate will put the integrity of the program at risk. When making this determination, the department may consider the following information relating to the applicant:

- (a) ability to comply with the program requirements;
- (b) willingness to comply with the program requirements;
- (c) history, as provided by the department or Department of Livestock, of noncompliance with livestock or agriculture rules that has lead to fines;
- (d) whether applicant will be subject to the jurisdiction of the program;
- (e) whether livestock to be enrolled will be subject to the jurisdiction of the program;
- (f) whether applicant has, in the past, failed to meet any requirements of the program;
- (g) whether applicant has done anything to jeopardize the integrity of the program.

(5) Each certificate shall be renewed annually upon receipt of a renewal application unless the certificate is otherwise terminated by the department.

AUTH: 80-11-801, MCA

IMP: 80-11-801, MCA

NEW RULE III PROGRAM REQUIREMENTS (1) To enroll an animal in the program, a producer shall submit the required data to the department. The data shall be in an electronic form or in manuscript as required by the department. Certificate holders shall confirm the animal to be enrolled was born within the state of Montana, has continuously been in Montana, and remains in Montana in the physical possession of a certificate holder at the time of enrollment.

(2) Certified cattle may not be fed any products containing:

(a) food processing waste, restaurant food waste, dried poultry waste, dried poultry litter, dried ruminant waste, dried swine waste, undried processed animal waste products, or processed animal waste derivative as these products are defined on pages 326 and 334 through 336 of the 2005 "Official Publication of the Association of American Feed Control Officials Incorporated," published by the Association of American Feed Control Officials Incorporated. Copies may be obtained from the Association of American Feed Control Officials, P.O. Box 478, Oxford, IN 47971; or

(b) any material prohibited from use in ruminant livestock feeds pursuant to the Code of Federal Regulations, 21 C.F.R. 589.2000, as amended April 1, 2004. Copies may be obtained from the Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; or

(c) feed products containing drugs, chemicals, and/or ionophores.

(3) To qualify as Montana certified natural beef cattle, the cattle must be finished on a ration that is natural feed containing no drugs, chemicals, ionophores, or animal by-products. Detailed records and invoices must be available for inspection to verify the duration of feeding and the ration content.

(4) To qualify as Montana certified natural grass-fed beef cattle, animals must be fed a feed source consumed for the lifetime of the ruminant animal, with the exception of milk consumed prior to weaning within Montana and raised in compliance with this program. The diet shall be derived solely from forage consisting of grass (annual and perennial), forbs (e.g., legumes, Brassica), browse, or cereal grain crops in the vegetative (pregrain) state. Animals cannot be fed grain or grain byproducts and must have continuous access to pasture during the growing season. Hay, haylage, baleage, silage, crop residue without grain, and other roughage sources may also be included as acceptable feed sources. Routine mineral and vitamin supplementation may also be included in the feeding regimen. If incidental supplementation occurs due to inadvertent exposure to nonforage feedstuffs or to ensure the animal's well being at all times during adverse environmental or physical conditions, the producer must fully document (e.g., receipts, ingredients, and tear tags) the supplementation that occurs including the amount, the frequency, and the supplements provided. Detailed records and invoices must be available for inspection to verify the duration of feeding and the ration content.

(5) The certificate holder shall keep detailed records in compliance with [New Rule IV].

(6) To retain eligibility in the program, the transfer of certified cattle shall be made as follows:

(a) every certificate holder who transfers ownership or physical possession of enrolled cattle to another certificate holder shall warrant the cattle comply with all requirements of the program. The warranty shall be in writing on a form provided by the department. The warrant form shall be provided to the transferee before or at the time of transfer;

(b) the transfer of certified enrolled cattle from one certificate holder to another shall be reported to the department or its designees as follows:

(i) when enrolled cattle are transferred from a certificate holder to another certificate holder, the transferor shall report the transfer to the department before or at the time of the transfer;

(ii) any transfer, other than as expressly provided for in these rules, automatically terminates the enrollment of the animal in the program unless specifically exempted by the department.

(7) A certificate holder who enrolls cattle and raises them in compliance with program requirements may use the mark "Montana Certified Natural Beef," or "Montana Certified Natural Grass-fed Beef," in connection with qualifying cattle.

AUTH: 80-11-801, MCA

IMP: 80-11-801, MCA

NEW RULE IV RECORD KEEPING (1) The certificate holder shall maintain records of the enrolled cattle which must include the following:

(a) month and year of birth and premise;

(b) health records, including vaccine lot numbers, the vaccine manufacturer, and dates of vaccination;

- (c) transfers of ownership and physical possession of certified cattle, including a record of the date and the person who reported the transfers to the department data management system;
 - (d) compliance with the certificate requirement for the enrolled cattle fed;
 - (e) temporary premise transfers;
 - (f) lost or destroyed cattle;
 - (g) duration of feeding and ration content.
- (2) Records shall be kept on forms provided by the department. Records shall be available for inspection during normal business hours by the department, Department of Livestock, or either department's authorized agents. The records required by this chapter shall be kept for five years.

AUTH: 80-11-801, MCA
IMP: 80-11-801, MCA

NEW RULE V INSPECTIONS AND AUDITS (1) The applicant shall submit to premises and records inspections and audits to ensure compliance with program requirements as required by the department or Department of Livestock or its designees.

- (2) Each certificate holder may be inspected up to once each year.
- (a) A certificate holder who has failed an inspection may be inspected again in the same year and must pay for the additional inspection.
- (b) If the department has reason to believe a certificate holder is engaged in a violation of the law or rules governing the certificate, the department may perform an additional inspection but may not charge an inspection fee for it.

AUTH: 80-11-801, MCA
IMP: 80-11-801, MCA

NEW RULE VI FEES AND COSTS (1) The annual certification fee is \$100.

- (2) The inspection fee is \$2 per head.
- (3) All fees paid to the department by certificate holders shall be deposited into the fund administered by the department.

AUTH: 80-11-801, MCA
IMP: 80-1-103, 80-11-801, MCA

NEW RULE VII ENFORCEMENT (1) The department may take informal or formal enforcement action against a certificate holder for violation of department statutes or rules.

- (2) The department's informal enforcement action may include:
 - (a) requiring the certificate holder to take corrective action within the time specified by the department by department order;
 - (b) removal of enrolled cattle from the program if the department finds an animal does not comply with the standards and requirements of the program;
 - (c) requiring additional inspections.

(3) The department's formal enforcement actions shall be conducted under the Montana Administrative Procedure Act. The department may suspend or revoke the certification if the department finds the cattle or products do not conform to the requirements of the program.

(4) The department may suspend or revoke a certificate for causes including but not limited to:

- (a) failure to maintain records as required by this chapter;
- (b) failure to allow or provide access for the department to the certificate holder's premises or records;
- (c) failure to comply with applicable federal, state, or local law;
- (d) failure to pay fees when due;
- (e) any other violations of this chapter; or
- (f) receipt of credible evidence the certificate holder did not meet the eligibility requirements set forth in this chapter at the time the certificate was issued.

AUTH: 80-11-801, MCA

IMP: 80-11-801, MCA

REASONS: The proposed new rules are necessary to implement the provisions of Senate Bill 544, codified at 80-11-801, MCA, as passed by the 2007 Montana Legislature. Senate Bill 544 required the Departments of Agriculture and Livestock to create and administer a Montana Certified Natural Beef Cattle and Montana Certified Natural Grass Beef-fed Cattle Marketing Program, and to provide qualifications for certification of this program. The proposed new fees will generate \$5,000 in revenue, based on 25 potential applicants in the state.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action orally or in writing to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on February 14, 2008.

5. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, Attention: Cort Jensen, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

6. An electronic copy of this Notice of Proposed Adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy

between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on October 15, 2007 by regular mail.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State, January 7, 2008.